

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 30, 2006 Session

LARRY L. CRAIN v. JEWEL CHAMBERS

**An Appeal from the Chancery Court for Sumner County
No. 2005C-28 Tom E. Gray, Chancellor**

No. M2005-01236-COA-R3-CV - Filed October 31, 2006

This is a petition to vacate the decision of an arbitration panel. The plaintiff attorney represented the defendant client in her efforts to nullify a prenuptial agreement and obtain an elective share of her deceased husband's estate. The parties executed a retainer agreement. In the agreement, the client agreed to pay the attorney a contingency fee for all of his legal services, except for the collection of a promissory note due from her deceased husband's estate. As to the promissory note, the client agreed to pay an hourly rate. The attorney then facilitated a settlement between the client and her husband's estate as to all issues. After that, a dispute between the attorney and the client arose as to the amount that the client owed the attorney under their contingency fee arrangement. The parties submitted their fee dispute to arbitration. After a hearing, the arbitration committee determined that the attorney was not entitled to a fee, because the client received no assets from the estate in the settlement. The attorney then filed the instant petition to vacate the decision of the arbitration committee, alleging that the committee exceeded its powers in determining whether he was entitled to any fee whatsoever, rather than simply determining the amount of the fee to which he was due. The trial court dismissed the petition for failure to state a claim on which relief could be granted. The attorney now appeals. We reverse, finding that the petition properly avers a claim for relief.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is
Reversed and Remanded**

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, J., and DONALD P. HARRIS, SR. J., joined.

Brian Schuette, Bowling Green, Kentucky, for the appellant, Larry L. Crain.

Barbara J. Moss and D. Andrew Amonette, Nashville, Tennessee, for the appellee, Jewel Chambers.

OPINION

Prior to their marriage, Respondent/Appellee Jewel Chambers (“Chambers”) and her husband, Harold Wesley Chambers (“decendent”), executed a prenuptial agreement. Under the agreement, Chambers was divested of any interest in her husband’s estate except for a life estate and a half interest in their marital home, located at 760 Gibbs Lane, Gallatin, Tennessee. The agreement prohibited Chambers from selling the marital home.

The decedent died on July 2, 2003, leaving a Last Will and Testament. An estate was opened, and the decedent’s will was probated in probate court. In the will, the decedent had made no provision for Chambers.

Under Tennessee law, the decedent’s estate was not liable for the debt on the marital home, in which Chambers had a life estate and half interest; Chambers had inherited this debt. However, under the prenuptial agreement, Chambers could not sell the home. Thus, Chambers had been left with an interest in property she could not sell, along with debt on the property of about \$209,000.

On August 7, 2003, Chambers contacted Petitioner/Appellant Larry L. Crain (“Crain”), an attorney, to represent her in an effort to nullify the prenuptial agreement and obtain an elective share of her husband’s estate. She also wanted Crain to represent her in enforcing a promissory note she had with her late husband. Crain determined that Chambers was unable to pay for his services on an hourly basis. Consequently, Crain offered to represent Chambers on a contingent fee basis as to all matters except the effort to enforce the promissory note. Crain agreed to undertake the promissory note matter for an hourly rate of \$200. On August 11, 2003, the parties executed a retainer agreement to this effect. It states in relevant part:

(1) Professional Undertaking. You have retained us to represent you in an estate contest in the Probate Court for Sumner County, Tennessee in the Estate of Harold Chambers, and in an action to recover a promissory note.

(2) Fees. You have agreed to pay an initial, non-refundable retainer in the amount of \$2,000.00, together with a contingency fee representing 33% of any amount recovered in settlement of this case, excluding any recovery of the principal balance remaining due from the promissory note. In the event this case proceeds to trial, the contingency fee will be 40% of all sums awarded. In addition, client has retained us to recover the outstanding balance of the amount owed to her by her deceased husband’s estate on a promissory note in the approximate amount of \$44,000.00. As to the collection of this note only, client agrees to pay us an hourly rate of \$200.00 per hour.

On October 6, 2003, Crain filed a petition in the probate court on behalf of Chambers for an elective share of her late husband’s estate. He also filed a motion to declare the promissory note in default. The proceedings in the probate court were hotly contested. The estate opposed Chambers’

petition for an elective share, and it also filed a counter-claim against Chambers to set aside the promissory note.

The trial was scheduled for April 2004. In anticipation of the trial, depositions were scheduled for January 15, 2004. The morning of the scheduled depositions, Chambers told Crain that she wanted to resolve the litigation as expeditiously as possible. Chambers and Crain discussed various settlement scenarios; in doing so, they specifically addressed the issue of how deduction of Crain's contingent fee would impact Chambers' net recovery. Later that day, settlement negotiations ensued between Chambers and the decedent's estate. A settlement agreement was reached which disposed of all of Chambers' claims as well as the estate's counterclaims against Chambers.

The settlement agreement was set out in a consent order entered by the probate court on January 26, 2004. Under the terms of the consent order, the estate was required to pay Chambers \$325,000 and assume responsibility for the \$209,746.79 mortgage on the marital home. In addition, the estate was obligated to honor the terms of the disputed balance on the promissory note in the approximate amount of \$35,000. In return, Chambers' claims against the estate were dismissed and she relinquished her life estate and mortgage-encumbered half interest in the marital home.

On February 17, 2004, Crain met with Chambers to make final calculations on the division of the settlement proceeds and payment of his contingency fee. Crain took the position that Chambers' recovery from the estate was \$300,147.55 (\$325,000 payment less the outstanding balance of the promissory note). Crain believed that he was entitled to 33% of that amount, or \$99,048.69. In addition to that contingency fee, Crain sought hourly fees in the amount of \$5,267.50 for his efforts on the promissory note. Thus, Crain claimed a total fee of \$104,316.19. Chambers refused to pay Crain the full amount of attorney's fees claimed. When the parties reached an impasse on the payment of the attorney's fees, Crain filed a Notice of Attorney's Fee Lien in the probate action on May 11, 2004.

On July 28, 2004, Chambers and Crain entered into an agreement to submit their fee dispute to arbitration before the Fee Dispute Committee of the Nashville Bar Association ("Committee"). The Agreement to Arbitrate ("Agreement") executed by the parties included a section with a blank for the parties to insert a description of the scope of the Committee's authority. This section of the arbitration agreement was not filled out.

On December 21, 2004, the Committee conducted a hearing on the fee dispute. On January 12, 2005, the Committee issued its written decision in the matter. At the outset of the written decision, the Committee stated the issue presented as follows:

The issue presented is whether Mr. Crain is entitled to assert a contingency fee recovery in connection with his representation of Ms. Chambers in a proceeding challenging a prenuptial agreement executed by Wesley Harold Chambers, deceased, and Ms. Chambers on February 21, 2000 (hereinafter the "Action"). Mr. Crain has proposed a contingency fee recovery of \$101,722.60. This is based upon the terms

of an engagement letter dated August 11, 2003 (as executed by Ms. Chambers on August 15, 2003). Mr. Crain asserts that a contingency fee recovery is due in relation to an Agreed Order concluding the Action.

Thus, the Committee stated the issue before it as whether Crain was entitled to a contingency fee from Chambers.

In its decision on this stated issue, the Committee concluded that Crain was not entitled to recover a contingency fee from his representation of Chambers. It determined that he was entitled to the hourly-rate fee, plus interest on his efforts as to the promissory note. In denying Crain a contingency fee, the Committee reasoned that Chambers' recovery was based on property that was not an asset of the decedent's estate and, therefore, there was no "recovery" from the estate. The Committee explained:

It is the finding of the Panel that the terms of settlement did not generate a contingency fee recovery pursuant to the engagement letter dated August 11, 2003 because the Panel finds that the contingency fee arrangement applied only to any recovery had from the Estate of Harold Chambers. It is the further finding of the Panel that the settlement evidenced by the Agreed Order entered on January 26, 2004, contemplated a liquidation of Ms. Chambers' interest in the residential real estate located on Gibbs Lane, Gallatin, Tennessee, and this property was not an asset of the Estate of Harold Chambers. Accordingly, it is the finding and judgment of the Panel that the terms of the settlement in the Action did not result in a recovery against the Estate of Harold Chambers and no contingency fee is due to Mr. Crain.

Thus, the Fee Dispute Committee concluded that Crain was due only the hourly rate fee of \$5,267.50.

On February 3, 2005, Crain filed the instant petition to vacate the arbitration award and to enforce the attorney's fee lien he filed in the probate action. In his petition, Crain asserted that the Arbitration Agreement was defective because the scope of the Committee's authority was not specified in the Agreement. The petition averred that, because the scope of the Committee's authority was not set out in the Agreement and the mutual mistake of the parties, (1) "there was never a meeting of the minds" between the parties, (2) "the parties are entitled to introduce extrinsic evidence so that the court may construe the agreement," (3) the Agreement is "subject to reformation by a court of equity," and (4) the Agreement "is subject to rescission by a court of equity." Crain contended that the issue submitted to the Committee was not whether he was entitled to a fee, but "whether the attorney fee claimed by Attorney Crain under his contingent fee agreement was reasonable." Therefore, Crain argued that the Committee "exceeded its authority by deciding the arbitration on the basis of an entirely separate and distinct issue: whether Attorney Crain was even entitled to a contingent fee." Finally, Crain asserted that the Committee's decision should be set aside because it "manifests a complete disregard for the law inasmuch as the Panel ignored the existence of a valid and binding contingent fee contract"

On March 21, 2005, Chambers filed a motion to dismiss Crain's petition for failure to state a claim upon which relief could be granted pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure. She asked the trial court to enforce the award of the Arbitration Committee.

On April 11, 2005, the trial court conducted a hearing on the motion to dismiss Crain's petition.¹ On April 22, 2005, the trial court entered an order granting Chambers' motion to dismiss. The trial court determined that the Arbitration Agreement "was not defective and there was no misunderstanding or mutual mistake between the parties as to what issue was before the [Committee]." In the absence of any misunderstanding or mutual mistake, the trial court found, the Agreement to arbitrate was not subject to rescission or reformation. The trial court held that, in the Agreement, the parties mutually agreed to submit their dispute to arbitration, and the Committee "did not exceed their powers by addressing the issue of a contingency fee dispute which was presented to the panel." From this order, Crain now appeals.

On appeal, Crain argues that the trial court erred in dismissing his complaint on its face because it contained allegations that (1) the Committee exceeded its authority, (2) the agreement to arbitrate is defective and subject to reformation or rescission, and (3) the Committee's award manifests a disregard for the law. Assuming the truth of the allegations, Crain asserts, each of his claims are valid. In response, Chambers argues that the arbitration award may be vacated only upon the grounds set forth in the applicable statute. *See* T.C.A. § 29-5-313 (2000). While an arbitration award can be vacated under the statute if the Committee exceeded its authority, Chambers argues, Crain failed to state a claim under this provision, since he admittedly agreed to arbitrate his fee dispute with Chambers. By voluntarily submitting his fee dispute to arbitration, she claims, Crain was asking the Committee to determine all aspects of his claimed fee, including whether he was entitled to any fee at all.

The order from which this appeal arises was a dismissal of Crain's petition for failure to state a claim under Rule 12.02(6). The dismissal of a complaint under this Rule must be reviewed by taking all allegations of fact in the plaintiff's petition as true, and reviewing the trial court's legal conclusions *de novo* with no presumption of correctness. *See* Tenn. R. App. P. 13(d); *see also Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997). For purposes of making a determination under Rule 12.02(6), "the moving party is deemed to have admitted the truth of all relevant and material averments in the complaint." *Cannon County Bd. of Educ. v. Wade*, 178 S.W.3d 725, 727 (Tenn. Ct. App. 2005). A complaint should not be dismissed upon such a motion "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Fuerst v. Methodist Hosp. S.*, 566 S.W.2d 847, 848 (Tenn. 1978).

Tennessee has adopted the Uniform Arbitration Act, Tennessee Code Annotated §§ 29-5-301 *et seq.* *See D & E Constr. Co. v. Robert J. Denley Co.*, 38 S.W.3d 513, 518 (Tenn. 2001); *Arnold v. Morgan Keegan & Co.*, 914 S.W.2d 445, 448 (Tenn. 1996). Pursuant to Tennessee Code

¹ A transcript of that hearing is not in the record. It is undisputed, however, that no evidence was presented, as the issue before the court was Chambers' motion to dismiss for failure to state a claim under Rule 12.02(6).

Annotated § 29-5-313(a), an arbitration award can be vacated only if the plaintiff establishes one of five statutory grounds:

- (1) The award was procured by corruption, fraud or other undue means;
 - (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
 - (3) The arbitrators exceeded their powers;
 - (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 29-5-306, as to prejudice substantially the rights of a party; or
 - (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 29-5-303 and the party did not participate in the arbitration hearing without raising the objection.
- The fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

T.C.A. § 29-5-313(a) (2000). “[A] trial court may vacate or modify an arbitration award only as provided by statute.” *Arnold*, 914 S.W.2d at 450. We now review the allegations in the complaint to determine whether Crain has set forth a proper claim for relief under the statute.

We first address Crain’s argument that he stated a claim for relief by alleging that the Committee exceeded its authority insofar as it addressed whether Chambers was entitled to any fee at all. Crain’s petition to vacate the arbitration award states:

32. The issue submitted to the Panel was whether the attorney fee claimed by Attorney Crain under his contingent fee agreement was reasonable, not whether he was entitled to any fee at all.

35. Rather than decide the issue presented for arbitration, *i.e.* whether Attorney Crain’s contingent fee was reasonable under the [statutory] factors . . . , the Panel exceeded its authority by deciding the arbitration on the basis of an entirely separate and distinct issue: whether Attorney Crain was even entitled to a contingent fee.

Thus, the petition asserts a claim based on the third statutory ground, that the Committee exceeded its powers in addressing an issue that was not before it. Crain argues that this assertion, taken as true, states a valid claim for relief under the statute.

Chambers acknowledges that Crain seeks to assert a claim under this statutory provision, but argues that he fails to state a claim because he admittedly entered into an agreement to arbitrate his fee dispute. Chambers contends that the Committee was entitled to address all aspects of the parties’ fee dispute, asserting that “[c]learly the Committee’s scope of authority encompassed determining

whether any contingency fee was owed to Crain.” She argues that the concepts of fee *entitlement* and fee *reasonableness* are so interrelated that the Committee was justified in addressing both. In support, Chambers cites **White v. McBride**, 937 S.W.2d 796, 800 (Tenn. 1996), in which the Supreme Court affirmed the lower courts’ holding that a contingency fee charged to an estate was “clearly excessive” and that, therefore, the attorney’s contingency fee agreement was not enforceable at all. *Id.* at 801. In the same way, Chambers argues, the Fee Dispute Committee was asked to resolve the dispute between Chambers and Crain regarding all aspects of Crain’s contingency fee, and the Committee acted within its authority in finding that Crain was not entitled to any fee at all.

The scope of an arbitration panel’s authority “is determined by the terms of the agreement between the parties which includes the agreement to arbitrate.” **Williams Holding Co. v. Willis**, 166 S.W.3d 707, 711 (Tenn. 2005) (quoting **D & E Constr. Co.**, 38 S.W.3d at 518 (quoting **Int’l Talent Group, Inc. v. Copyright Mgmt., Inc.**, 769 S.W.2d 217, 218 (Tenn. Ct. App. 1989)); *see also Arnold*, 914 S.W.2d at 450. In this case, the parties’ arbitration agreement, attached as an exhibit to the complaint, was a one-page standardized agreement to arbitrate. The agreement included a section, to be completed by the parties, to explain the “nature of” their dispute. This portion of the Agreement was left blank. Crain argues that he and Chambers had agreed that he was entitled to a fee, and that the proceedings before the Committee addressed only the issue of reasonableness. He claims that he was unaware that the Committee believed that it was charged with determining whether he was entitled to any fee whatsoever until he received the Committee’s written decision, stating that to be the issue before it. In response, Chambers argues that Crain consented to arbitrate all aspects of the fee award by virtue of the general agreement to arbitrate.

In this case, the decision of the Fee Dispute Committee, attached to the complaint, states that the issue to be decided was “whether Mr. Crain is entitled to assert a contingency fee recovery in connection with his representation of Ms. Chambers” We must agree with Crain that this is a different issue than whether the fees requested were reasonable in light of the factors pertinent to such an inquiry, such as the quantity and quality of work performed. Consequently, the issue of whether the Committee exceeded its powers necessarily would require an inquiry into what the parties had agreed with respect to the scope of authority granted to the Committee. In reviewing the trial court’s disposition of a motion to dismiss, we must take the allegations in Crain’s petition as true. Under these circumstances, we must conclude that the complaint states a valid claim that the Committee’s decision must be vacated because the Committee exceeded its powers and acted outside the scope of its authority. Therefore, the trial court’s dismissal of the complaint must be reversed on this basis.

Crain’s complaint also alleges that the arbitration agreement is subject to reformation or rescission based on the mutual mistake of fact, attacking the existence of a valid agreement to arbitrate. In making this assertion, he seeks to state a claim for relief under subsection (5) of section 29-5-313(a). However, this provision states that an arbitration award can be vacated if there was no valid agreement “and the party did not participate in the arbitration hearing without raising the objection.” T.C.A. § 29-5-313(a)(5) (2000). Here, the petition notes that Crain participated fully in the arbitration proceedings and does not allege that he raised an objection in the arbitration

proceedings regarding a mutual mistake or the scope of the Committee's authority. Therefore, we affirm the trial court's holding that Crain does not state a valid claim for relief on this basis.

Finally, Crain urges this Court to recognize an action to vacate an arbitration award that reflects a manifest disregard for the law. Crain candidly admits that this basis for challenging an arbitration award is not one that is enumerated under the statute, but he argues that, as a court of equity, the Court should be permitted to overturn an arbitration award on this basis. However, the statute cautions specifically that "[t]he fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award." Furthermore, "a trial court may vacate or modify an arbitration award only as provided by statute." *Arnold*, 914 S.W.2d at 450. Under these circumstances, we affirm the trial court's rejection of Crain's argument that he states a valid claim for relief on this basis.

For the reasons set forth above, the decision of the trial court is reversed and the cause is remanded for further proceedings not inconsistent with this Opinion. Costs on appeal are to be taxed to Appellee Jewel Chambers, for which execution may issue, if necessary.

HOLLY M. KIRBY, JUDGE